

§ 217.89

data that could contribute to the decision to modify the mitigation or monitoring measures:

- (1) Results from the U.S. Air Force's monitoring from the previous year;
- (2) Results from marine mammal and sound research; or
- (3) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 217.89 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS issued pursuant to § 216.106 of this chapter and § 217.87 of this chapter and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 217.88, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.80(b), a Letter of Authorization issued pursuant to § 216.106 of this chapter and § 217.87 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification shall be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subparts J–O [Reserved]

Subpart P—Taking Marine Mammals Incidental to Construction and Operation of a Liquefied Natural Gas Deepwater Port in the Gulf of Mexico

SOURCE: 78 FR 20816, Apr. 8, 2013, unless otherwise noted.

50 CFR Ch. II (10–1–13 Edition)

EFFECTIVE DATE NOTE: At 78 FR 20816, Apr. 8, 2013, subpart P was added, effective June 1, 2013 to May 31, 2018.

§ 217.151 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Port Dolphin Energy LLC (Port Dolphin) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to construction and operation of the Port Dolphin Deepwater Port (Port).

(b) The taking of marine mammals by Port Dolphin may be authorized in a Letter of Authorization (LOA) only if it occurs in the vicinity of the Port Dolphin Deepwater Port in the eastern Gulf of Mexico or along the associated pipeline route.

§ 217.152 Effective dates.

Regulations in this subpart are effective from June 1, 2013, through May 31, 2018.

§ 217.153 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 and 217.157 of this chapter, the Holder of the LOA (hereinafter “Port Dolphin”) may incidentally, but not intentionally, take marine mammals within the area described in § 217.151(b) of this chapter, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 217.151(a) of this chapter is limited to the following species and is limited to Level B Harassment:

- (1) Bottlenose dolphin (*Tursiops truncatus*)—3,388 (860 the first year and an average of 632 annually thereafter)
- (2) Atlantic spotted dolphin (*Stenella frontalis*)—1,274 (290 the first year and an average of 246 annually thereafter)

§ 217.154 Prohibitions.

Notwithstanding takings contemplated in § 217.151 of this chapter and authorized by a LOA issued under §§ 216.106 and 217.157 of this chapter, no